MICHIGAN CIVIL SERVICE COMMISSION
EMPLOYMENT RELATIONS BOARD
IMPASSE PANEL

IP 2013-01

IMPASSE PANEL RECOMMENDATION

for the

ADMINISTRATIVE SUPPORT UNIT; HUMAN SERVICES SUPPORT UNIT; HUMAN SERVICES UNIT; INSTITUTIONAL UNIT; LABOR AND TRADES UNIT; SAFETY AND REGULATORY UNIT; SCIENTIFIC AND ENGINEERING UNIT; SECURITY UNIT; AND TECHNICAL UNIT

CONTRACT TERM
January 1, 2014, to December 31, 2015

November 27, 2013

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A. INTRODUCTION

Civil Service Commission Rule 6-9.4 provides for resolution of impasses between parties negotiating collective bargaining agreements. In September 2013, requests for impasse panel assistance were made with respect to the Institutional Unit by the American Federation of State, County, and Municipal Employees Council 25 **(AFSCME)**, the Security Unit by the Michigan Corrections Organization **(MCO)**, the Labor and Trades Unit and Safety and Regulatory Unit by the Michigan State Employees Association **(MSEA)**, the Human Services Support Unit, Scientific and Engineering Unit, and Technical Unit by the Service Employees International Union 517M **(SEIU)**, the Administrative Support Unit and Human Services Unit by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local Union 6000 **(UAW)**, and the Office of the State Employer **(OSE)**. The several unions **(Coalition)** have jointly submitted a brief on issues spanning across several bargaining units.

In SPDOC 13-07, the state personnel director established a schedule to allow impasse panel assistance and commission review before the current contracts expire. In addition to the bargaining unit-specific issues discussed in IP 2013-02 through IP 2013-08, the parties have certified impasse on several issues common among bargaining units. The parties have submitted proposed language, position statements, and exhibits regarding these matters. The parties also have submitted language for the remaining provisions in the collective bargaining agreements **(CBA)** where tentative agreement was reached.

An impasse hearing was held on November 13, 2013. All parties had the opportunity to present arguments on the provisions at impasse. The panel has considered all testimony and evidence presented in making the following recommendation.

B. Impasse Issues

This consolidated impasse panel recommendation will address the following issues, which have been certified at impasse across several bargaining units:

- Wages and Premiums
- Insurance Benefits
- Overtime Treatment of Compensatory Time
- Union Dues

C. Impasse Panel Criteria

Civil Service Rule 6-9.4(b) establishes the following potential criteria for the impasse panel to consider in making its recommendation:

(1) Stipulations and agreements.

(2) The interests and welfare of the public.

(3) The financial condition and ability of the state.

(4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.

(5) Appropriate economic indicators and forecasts.

(6) Total compensation, including fringe benefits, presently received by employees.

(7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.

In IP 2000-05, the impasse panel further clarified that:

> At impasse, when one party requests a significant change to current language to which the other party objects, the proponent of change should present concrete evidence of the need for the change, such as inefficiencies in operations, inequitable treatment, hardships, or other convincing justifications for the change.

D. Discussion and Recommendations

1. Wages and Premiums

All unions have proposed a general wage increase of three percent in fiscal years beginning October 1, 2014, and October 1, 2015. The OSE has proposed a two-percent general wage increase for the fiscal year beginning October 1, 2014, and a one-percent general wage increase for the fiscal year beginning October 1, 2015.

The OSE also proposed eliminating the high-security premium for five bargaining units.

Several unions have also requested specific wage increases for certain classifications or additional pay premiums. The OSE has also requested changes for pay premiums and training funds in various units. Those requests that are unique to each bargaining unit will be addressed in the unit-specific panel recommendations.

A. Position of OSE

The OSE argues that the compensation package for state employees remains highly competitive and favorable when compared to other public and private employers. In a 2011 review of 193 Michigan employers, Michigan's maximum wage exceeded that of the weighted average or median of maximum wages in 82% of classifications surveyed. Further, the fringe benefit package offered is generous in comparison to other employers. A review of employment statistics shows both low turnover and high interest in applying for state jobs. The average of 121 applicants for each bargaining-unit vacancy posting suggests that the compensation package offered is attractive.

The OSE also cites surveys by the Mackinac Center for Public Policy and the American Federation of Teachers suggesting that state benefits are highly competitive. In the past decade, the average wage of state employees has increased 24.1% from $43,893 to $54,475. Average fringe benefit costs during the last decade have more than doubled from $18,220 to $36,896. This represents a total wage and benefit increase of 47% over the period.

While Michigan's economy has rebounded from the depths of the recent recession, it still remains below pre-recession levels. While growth is forecasted for the next two years, risks remain at the state, federal, and global levels that require consideration. The 2% and 1% increases requested by the OSE reflect increased statewide costs of around $224 million dollars over the two-year contract; the Coalition's two 3% increases would cost over $405 million statewide. The OSE asserts that the Coalition's calculations ignoring other post-employment benefit (OPEB) costs are inaccurate because OPEB costs must be paid on the wages of active employees. The OSE argues that its proposal, coupled with the insurance changes proposed, represents a fiscally responsible approach that continues to provide a highly competitive total benefit package.

The OSE also requests the elimination of high-security premium pay. The OSE argues that this premium was developed as an additional retention incentive when new prisons were opened and employees were transferring away from high-security facilities. These retention issues no longer exist, so the rationale for the benefit has disappeared. Other than for the security unit where it is awarded for all hours in pay status, tracking eligibility for the premium is problematic and labor-intensive. The OSE argues that it often costs more to process payments than is actually received by employees. The OSE also rejects changes proposed by the UAW that would further expand problems with the premium.

The OSE describes the Coalition's arguments as diversionary and rejects the call to send the parties back to the bargaining table. The OSE argues that the parties have bargained for months in dozens of sections and have certified agreement on hundreds of provisions.

The OSE also rejects the accusation that its proposals perpetuate austerity. The OSE claims that the Coalition has made assertions without supporting documentation and consistently stated during bargaining that they had not estimated costs for the Coalition proposals. The OSE also rejects the notion that the Coalition's stepping back from its initial wage proposal of 5% for each year of a three-year contract represented good-faith bargaining. The total cost of such a proposal would have been $1.4 billion over three years. Revising artificially high initial proposals is simple.

The OSE raises concerns over the affidavits offered by the Coalition. The measured statements of Mitchell Bean, former director of the House Fiscal Agency, state that the economy and tax base *should* grow, but does not state that they will. Much can happen during this period and weighing these risks is prudent.

B. Position of Coalition

The Coalition argues that a series of upward adjustments of state tax revenue estimates demonstrate the improving economic health of the state. Since January, the consensus forecast for state revenues for this fiscal year has risen from $19.9 billion to $20.66 billion. The Coalition produces an affidavit from Mr. Bean suggesting that forecasted revenues for upcoming fiscal years are understated by around $3 billion. The Coalition points to an average annual general-fund lapse over the past decade of $105 million, optimistic statements of the administration as to the fiscal turnaround in Michigan, and the availability of federal funds as demonstrating that Michigan's fiscal situation is stronger than suggested by the OSE and able to provide equitable treatment to state employees. The Coalition attacks the OSE's projections for not addressing favorable revenue numbers and consensus estimate revisions and for relying on vague "risks" that are not supported by evidence.

The Coalition highlights a series of concessions accepted by the unions. These have included increased sharing of health-care costs, furloughs, the banked-leave program, and other concessions. The Coalition also argues that civil servants' take-home pay has further decreased over the last decade by not even keeping up with the rate of inflation. And this is before the increased health care costs are considered.

The Coalition believes that its proposal is a reasonable and modest attempt to halt some of the recent comparative losses in state employees' wages. The Coalition cites studies by Professor Jeffrey Keefe and by Professor Charles Ballard and Nicole Furani. Those studies concluded then when controlling for various factors such as education and demographics that state employees made less than comparable employees elsewhere. The OSE's studies fail to control for various factors and are unreliable.

The Coalition estimates that the costs for the bargaining unit employees' raises are $207.5 million, which is roughly 23% less than the OSE's estimates. The Coalition states that from 2008 to 2012, state employee wages grew by 1.8%, while private sector wages increased by 5.5%. To catch up with inflationary gains since 2008 would require 5.9% raises for each of the two years, so the 3% suggested is modest. The Coalition disputes the inclusion of OPEB costs in its wage-cost comparisons. OPEB is not wage-related since retiree health-care costs are not affected by wage changes.

The Coalition labels the OSE's high-security premium proposal as circular logic and unsupported by evidence. The premium was designed to eliminate retention problems.

That retention problems might no longer exist—which the Coalition disputes—would suggest that the premium is working rather than that it is not needed.

C. Impasse Panel Evaluation and Recommendation

This year, both parties provided detailed economic forecasts. When compared to recent economic presentations, there were many more positive signs, which is welcome news after a decade of negative news for Michigan's economy.

The Coalition has presented evidence of a brighter outlook with more tax revenues allowing wage increases to make up for an extended period of wages not keeping up with increases in the cost of living and further concessions during frequent budget shortfalls in the 2000s. The OSE, while acknowledging an improving fiscal outlook, cautioned for a more conservative response during the next few years until a more complete picture of the recovery is available.

Both parties have proposed base pay increases for both years of the contract: 2% and 1% by the OSE and 3% and 3% by the Coalition. The OSE also seeks to eliminate high-security pay premiums to achieve additional savings. In determining an equitable wage recommendation, the panel is to consider the public interest, the financial condition of the state, comparisons with other employers, and other relevant factors.

Unlike previous years with budget deficits, the panel detects the economic possibility to grant the Coalition's requests. The improving economy and budgetary prioritizations appear to have created a situation where tax revenues could fund the 3% raises sought by the Coalition. The panel, however, finds that a balancing of the equities and other factors call for a lesser award. There remain many other suitors for state funds, with equally valid claims.

In light of the OSE's submissions indicating expected inflation rates of around 1.8% and 1.9% in the upcoming two years, the OSE's proposal of 2% and 1% increases seems insufficient. The Coalition's proposals, however, disregard the significant contributions begun by the employer to begin pre-funding long-term liabilities of post-employment benefits. The panel believes that these acts by the employer should be considered during a holistic review of compensation levels. Based on these new expenditures by the employer for the future benefit of employees and general economic trends, the panel believes that annual base-pay increases of 2% are appropriate and fair.

Given recommended changes to health-care benefits, the panel also recommends a 0.5% lump-sum payment during the first year of the contracts and continuation of high-security premium pay. The OSE has offered anecdotal evidence that for several bargaining units the administrative costs to process a $0.10 premium exceed the benefit itself, but the panel would require more concrete evidence of those costs, particularly in an improved economic climate before considering them adequate justification to end this longstanding benefit. The modest lump-sum award would address some of the ground lost to inflation during previous contracts, while recognizing the unknown strength of the economic recovery and allowing adjustments during the next contract period. The retention and recruitment figures provided by the OSE demonstrate that the current benefits package remains sufficient to meet employment needs now. The panel hopes that with two more years of experience and data, the parties can reach agreement on wages during the next bargaining cycle based on the need and ability of the state to further enhance its compensation package.

Accordingly, the Impasse Panel **recommends** that (1) a 2% base-pay wage increase and a 0.5% lump-sum award be granted, effective October 1, 2014, (2) a 2% base-pay wage increase be granted, effective October 1, 2015 and (3) existing language regarding high-security premium pay be retained. The proposed collective bargaining agreements included as an appendix in the separate unit-specific impasse recommendations reflect these findings.

2. Health, Vision, and Dental Care

The State currently sponsors two self-insured group health plans: the State Health Plan for employees hired before April 1, 2010 (SHP), and a New State Health Plan for those hired on or after April 1, 2010 (NSHP). The state also offers enrollment in health maintenance organizations to employees. Employees hired before April 1, 2010 can elect coverage under the traditional HMO plans, while employees hired on or after April 1, 2010, are eligible only for a new HMO (NHMO).

The OSE proposes to move all employees into the NSHP and NHMOs, with the following changes to the structure of the plans:

- NSHP office-visit and urgent-care copays increased to $25 and specialist copays to $35.
- NSHP coinsurance for out-of-network office visits with specialists increased from 20% to 30%.
- NSHP in-network deductibles increased from $400/$800 to $500/$1,000.
- NSHP autism benefits added subject to deductibles and coinsurance.
- NSHP in-network out-of-pocket maximums increased from $1,500/$3,000 to $2,000/$4,000 and then $2,500/$5,000.
- NHMO office-visit and urgent-care copays increased from $20 to $25.
- NHMO deductibles of $150/$300 implemented.
- NHMO out-of-pocket maximums implemented at $2,000/$4,000 and then $2,500/$5,000.
- NSHP and NHMO enrollees who do not participate in a new wellness program will incur a $10 per pay period surcharge.
- The UAW and MCO will no longer have a veto right on offering specific HMOs.

The only proposed change by the OSE to the dental and vision plans is adding coverage for dental implants, which is agreed to by the Coalition.

The Coalition proposes the preservation of the legacy and new health plans based on hire date, with a freeze on employee premium rates at current levels for all plans. The Coalition also asks to add Lasik surgery coverage like the benefit currently received in the MSEA contract.

The Coalition proposes two further changes to the structure of the dental plan:

- Increasing the annual maximum in dental benefits from $1,500 to $1,750 in 2014 and $2,000 in 2015.
- Increasing the lifetime maximum orthodontics benefit from $1,500 to $2,250 in 2014 and $2,500 in 2015.

Some unions put forth additional requests for changes to the benefits structure. Requests that are not part of the coalition proposal will be addressed in the unit-specific impasse panel recommendations.

A. Position of OSE

The OSE states that its proposals are designed to maintain a high level of coverage while reducing the impact of future cost increases. The parties voluntarily agreed to the creation of the NSHP and NHMOs. The OSE argues that the Coalition proposals ignore and exacerbate the health-care cost problems the state faces.

The OSE projects that maintaining the status quo will increase health insurance costs $40 million for the current fiscal year alone, which is roughly equivalent to the cost of a 1% increase in base pay. Moving all employees into the same plan is equitable and decreases administrative burdens from maintaining multiple plans. It would also decrease average employee premium costs by roughly $500 while maintaining quality coverage.

If all employees were moved into the current NSHP and NHMOs at current premium levels, there would be $30 million less collected to fund health insurance benefits. Because the cost savings estimated from transitioning SHP and HMO employees to the current NSHP and NHMOs plan designs would only be $24 million, the OSE has offered additional changes that would allow the current premium costs to be maintained without running a negative fund balance. The plan design changes also may help avoid the excise tax required under the Affordable Care Act.

The OSE also argues that its proposal still leaves the NSHP as more expensive than average plans and with a smaller employee share of costs. The total cost for employee-only coverage for the NSHP would still be 25% higher than the average for large public employers calculated by the federal government and 12% higher than a survey of large employers by the Kaiser Family Foundation. The corresponding higher cost percentages for full-family coverage are 64% and 12%.

For cost sharing, deductibles, coinsurance, and out-of-pocket maximums for employer and full-family coverage, the OSE's surveys show that the state is below those for large employers except one. The disparities would continue to be even starker without the measured reforms proposed at impasse.

While the OSE recognizes that the parties have taken past steps to address the rapid growth in health care costs, continuing changes remain needed. The OSE has proposed several other changes to benefit design:

- Adding autism coverage to the NSHP. Such coverage is already offered by HMOs under state law.
- Implement a wellness awareness plan. The program would save money and help employees by detecting and treating potentially chronic diseases earlier through annual screenings. Employees who did not participate would pay a $10 surcharge per pay period.
- A letter of understanding to jointly explore alternative programs.
- Ending provisions in the MCO and UAW contracts that require union approval for an HMO to be offered. This will increase administrative efficiencies, equalize treatment, and address complaints where employees must change coverage as they change bargaining units.
- Adding dental implants as a covered benefit. The OSE finds that the Coalition proposals to increase annual and orthodontic benefits are unnecessarily expensive. The OSE states that the state is well in the 90th percentile of Michigan employers under Delta Dental. No evidence has been offered supporting the further improvements to this benefit.

The OSE challenges several of the Coalition's assertions on health care costs and savings:

- The Coalition states that its proposal will "largely maintain current language, with a few modest exceptions," but contains several changes that would increase costs by tens of millions of dollars.
- The Coalition argues that cost savings are never passed to employees. The OSE notes that the savings have prevented the need for premium rate increases, which means savings for employees. The OSE emphasizes that there is a projected deficit in the reserves of the SHP by the end of 2015, which will result in further costs for employees through premium increases if no action is taken now to address these structural issues.
- The Coalition suggests that any cost increases could be offset by a plan to realize savings through new health care programs. The OSE notes that a Joint Healthcare Committee was established two years ago and that Coalition members have routinely not attended meetings or taken action when needed.
- The Coalition assumes that the Affordable Care Act will lower health costs, but there is no evidence for such statements other than opinions at this time.
- The Coalition claims credit for savings from the rebidding of a prescription drug contract, but the OSE states that plans were already underway that were accelerated after negotiations, which the Coalition has downplayed.

- The Coalition claims proposals were included for the first time in impasse submissions, but these proposals were discussed with the unions and in the final proposal. After the Coalition rejected the OSE's final proposal, there was no guarantee that the impasse position would be as rich as what was on the table based on a total agreement.
- The Coalition claimed that data was never provided, although data was repeatedly provided when asked for.

Because surplus funds and reserves are no longer available to supplement revenues, realities must be addressed now. The structural changes proposed by the OSE make the plans more equitable across all employees and address the fiscal issues. The Coalition has failed to support its proposed plan changes, which would increase costs rather than curtail them.

B. POSITION OF COALITION

The Coalition highlights the numerous concessions that state employees have already accepted in health care. Since 2007, the premium shared by employees has gone from 5% to 20%. Copays for office and emergency-room visits and prescription drugs have increased. The less-favorable NSHP and NHMOs were developed for new hires. As suggested by the Coalition, the prescription drug benefit was rebid, which will result in tens of millions of dollars of savings to the state. This restructuring of benefits has cost employees dearly with, for example, full-family premium shares ballooning from around $60 a month in 2007 to around $330 today. The state meanwhile has enjoyed hundreds of millions of dollars in decreased costs from these concessions.

Given this history of concessions and the economic condition of the state as described earlier, the Coalition proposes maintenance of current benefits with a few changes to help employees heal from past concessions:

- Freezing employees' premium shares at current rates.
- Adding autism benefits without coinsurance.
- Increasing annual dental and lifetime orthodontic limits.

The Coalition also proposes a letter of understanding on the consideration of alternative methods of delivering health care, but would also include language providing that realized savings would be returned to employees through premium reductions.

The Coalition argues that its proposals are reasonable given the current improving financial condition of the state. Further, the Coalition projects that other initiatives, such as wellness programs and streamlined therapy programs, could create further savings.

The Coalition labels the OSE's proposal draconian. The Coalition offers examples of how hypothetical employees could face significantly larger out-of-pocket costs under the revised NSHP.

The Coalition rejects the proposed ending of union approval of HMO offerings because the measure of control that the veto power provides over the quality of health plans offered is important. The OSE could unilaterally remove or replace high-quality HMOs without this check.

The Coalition is not opposed to a voluntary wellness plan, but objects to the punitive plan offered by the state. Research indicates that incentivized wellness plans achieve better results. The paperwork-focused plan suggested by the OSE is more focused on shifting costs to employees and is inferior to the more holistic approach that could be offered in a better designed plan.

The Coalition argues that the OSE had not supported its claimed need for health care concessions with any relevant data and has denied access to data. The OSE's projections about health-care costs are unreliable and speculative and have ignored data like some recent years that have had no premium increases. The OSE's sample pools in some of the comparison studies are overwhelmingly composed of private employers, which have different patterns of benefits.

The Coalition also criticizes the OSE's actions in bargaining, alleging that the OSE submitted three proposals for the first time in its impasse submissions without previously passing them at the bargaining table. The Coalition also claims that the OSE made just two proposals on health care, which differed only slightly. The Coalition in comparison has made significant changes to its proposals through the bargaining process. The Coalition suggests that given the OSE's bad faith efforts the parties are not truly at impasse and the panel should order the parties back to the table.

C. Impasse Panel Evaluation and Recommendation

The panel senses denial by the Coalition of the seriousness of the funding problems of the state insurance offerings. While the panel is sympathetic with the Coalition's desire to preserve the legacy health plans available to employees hired before April 2010, there are several pressures requiring structural reforms.

A review of the balances of the State Sponsored Group Insurance Fund (SSGIF) shows that current reserves are dangerously low and are projected to be in deficit by the end of the first year of the contract without plan design changes or significant premium increases—even after recent 8% premium increases this fall. Despite this background, the Coalition's initial impasse submission called for a premium freeze for two years, maintenance of the more costly legacy plan, and several sweeteners that would drive spending up even further, such as an improved prescription drug benefit for new hires, a cap on HMO premiums for employees, a new Lasik surgery benefit, no-cost autism benefits, and increased dental benefits. While the Coalition subsequently withdrew some of these demands, the panel finds the Coalition's position to be unrealistic.

The Coalition has previously recognized the need for some reforms by voluntarily agreeing to the plan-design changes in the New State Health Plan for new hires during previous bargaining. The panel understands the OSE's concerns and its proposal for a different New State Health Plan with additional employee cost sharing, but believes that a more gradual step is appropriate at this time.

The panel believes that shifting all employees into the current New State Health Plan and New HMOs is an appropriate first step for several reasons:

- The plan-design changes should lessen the impact of any future premium increases to the benefit of all employees and reduce the risk of facing excise taxes under federal health care reform changes beginning in 2018.
- The basic plan design was already accepted by the Coalition in previous bargaining as appropriate for new hires.
- Different treatment of employees based on hire date will end.
- Employees hired after April 2010, who have previously received less generous benefits, will experience only minor changes to their coverage.
- Employees transitioned from the legacy to the New State Health Plan should have reduced premiums, leading to higher take-home pay.
- Administrative costs in administering multiple plans will be decreased.

The panel believes that the following minor modifications are also appropriate:

- Implementing in-network out-of-pocket maximums of $2,000/$4,000. Federal health care reform will change the operation of this portion of the health insurance benefit, which previously was rarely operative because of plan design. Further increases may be required as more employees can be expected to hit even this elevated ceiling under the changes to federal law, but for now the panel would recommend this incremental step.
- Autism benefits should be added with 90%/10% coverage levels to the New State Health Plan, as proposed by the OSE. The benefit is already required under state law as part of the HMOs offered to state employees, so this equitable treatment for New State Health Plan members is appropriate.
- A deductible of $125/$250 should be set for the New HMO. This deductible is below the deductible level for the New State Health Plan and the OSE's proposal, but reflects a reasonable measure that is prevalent in the HMO market generally and should help make the state's HMO offerings more affordable.
- Adding dental plan coverage for implants at 50% or 70% levels depending on the provider.

The OSE has also requested ending of review of HMO offerings by the two Coalition unions who have language allowing such review. The panel is sympathetic to the administrative concerns raised by the OSE, where the residence and bargaining unit of employees must be closely monitored to determine eligibility. Employees may need to drop HMO enrollments that they are happy with because of their union's rejection of an offering or a transfer into a bargaining unit, which seems an inequitable regulating of voluntary HMO choices. While the Coalition has raised the prospect of the OSE offering substandard plans or discontinuing quality plans, the panel has received no evidence of any such actions. A review of enrollment rights for current UAW members instead reveals seemingly arbitrary patterns. For example, a new hire residing in Detroit in zip code 48211 could not enroll in Priority Health East, but if she moved to zip code 48210 in Detroit or 48212 in Hamtramck, she could have coverage with that HMO.

Similar examples can be found where residents of the same town are treated differently with other HMOs in enrollment rights based only on their zip code. The Coalition indicates that the provision is needed to protect employees access to quality plans, but it seems mainly to be a tool to discontinue plans that are somehow still of sufficient quality for employees living a few blocks away. The panel can conceive of no legitimate explanation for such inequitable treatment of employees, which also compounds administrative costs for the plans. The panel recommends deletion of this language from contracts.

The panel finds that the remaining Coalition insurance proposals, including maintaining the legacy plan, a premium freeze, Lasik coverage, full autism coverage, and increased dental reimbursement caps, are inappropriate and would exacerbate the current funding gap for the SSGIF.

The panel struggled with its recommendation, given the importance of this benefit to employees. Since the 1999 plan year, health insurance premiums have tripled, which translates to annual increases of over 7.5%. The Coalition offered vague statements that federal health care reform should contain cost growth, but those hopes would appear to be just that at this point. With short- or long-term trends yet unknowable, the prudent course is to make plan design changes now rather than force further drastic premium increases to address the existing structural deficit later.

The Coalition has argued that it has suggestions for solutions, while the OSE counters that under existing committees Coalition members have either failed to attend or have spent months on preliminary matters like identifying members to attend meetings. There appears to have been cooperation in identifying and realizing cost savings during the current contract involving prescription drugs. The parties are strongly encouraged to repeat those efforts in identifying other areas where savings can be achieved through innovative programs or plan-design changes. While the panel rejects the OSE’s proposal for a wellness program with a surcharge for non-participating employees, some sort of wellness program would seem to be another area that should be examined.

Accordingly, the Impasse Panel **recommends** that all employees be offered the current NSHP and NHMO, as described and modified above, consistent with the provisions included in the proposed collective bargaining agreements included as an appendix in the separate unit-specific impasse recommendations.

3. UNION DUES

During 2013 negotiations, the parties recognized that the application of Public Act 349 of 2012 to employees in the classified service has been challenged in court. A recent Michigan Court of Appeals held that the law and its prohibition on closed-shop arrangements in public employment applied to the classified workforce.

Some unions reached tentative agreements with the OSE on language to bring collective bargaining agreements into compliance with PA 349. For each of these bargaining units, however, letters of understandings have been negotiated to impasse to address the ongoing legal challenges to the law’s applicability to the classified workforce. The OSE’s proposed letters of understanding for these impasses would provide that if the law is found not to apply, the parties would return to bargain over replacement language. The unions' proposals typically call for reverting to the current contract language if the law is found not to apply.

In other bargaining units, changes to the articles on union dues reached impasse in addition to the letters of understanding addressing the contingencies. The general discrepancy between returning to bargaining or reverting to current language was reflected in letters of understanding at impasse in these bargaining units also.

In some bargaining units, there was also impasse reached over appendices providing model membership and fee-payer cards.

A. Position of OSE

OSE proposes that the parties commit to promptly enter negotiations to reach a mutually satisfactory replacement to the amended provisions if PA 349 is ultimately found to not apply to state classified employees. The OSE argues that the courts could take several different actions, so the default position should be a return to the bargaining table.

B. Position of Coalition

The Coalition argues that the impetus for the changes is the statutory amendment. There have been no other suggestions for why the change is otherwise needed. Current language has been in place for years. If PA 349 is struck down, there would be no need to replace current language. Further, reopener clauses are typically intended for contracts of substantial duration. The proposed contracts will expire in two years. There is no need to engage in a second round of negotiations over one issue. The OSE has not previously identified issues with the language and would remain free to attempt to identify any issues for the next round of bargaining.

C. Impasse Panel Evaluation and Recommendation

The only reason that the provisions on dues have been changed is PA 349. While the OSE has alluded to some other concerns with the provision, the issue would not be here absent the legislative actions. If the basis for these changes is eliminated by an opinion of the Michigan Supreme Court, the panel sees no equitable basis to deny the Coalition a return to previous contractual terms. The panel would imagine that the OSE's concern of some result requiring further clarification through bargaining is unlikely.

Accordingly, the Impasse Panel **recommends** that LOUs reinstating current contract language if PA 349 is found not to apply to the classified workforce be included as reflected in the proposed collective bargaining agreements included as an appendix in the separate unit-specific impasse recommendations.

4. Overtime Treatment of Compensatory Time

Under federal law, eligibility for overtime compensation at a higher rate is contingent on hours actually worked exceeding an established minimum number. Under current contracts, time in various paid leave statuses is included toward the minimum-hours threshold even though not required by federal law.

The OSE has proposed to delete paid absences using compensatory time hours from the list of status types that count toward an employee meeting the minimum-hour requirement to qualify for overtime pay.

The unions affected by the OSE's request have proposed keeping current language, which includes time off work on compensatory time as hours worked for qualifying for overtime pay.

A. Position of OSE

The OSE argues that the overtime eligibility provisions exceed the requirements of federal law, which only require that hours actually worked count toward overtime eligibility. Over the last few bargaining cycles, voluntary agreements have been reached with several unions to exclude time on sick and annual leave from counting toward the minimum hour threshold. Because many agreements require the use of compensatory time before annual leave, the impact of the exclusion of annual leave is lessened. Further, because compensatory time is typically earned at time-and-a-half, it is fiscally irresponsible to allow compensatory time to facilitate additional receipt of overtime at time-and-a-half when the employee has not actually worked the hours. The OSE's proposal would equitably pay employees for their hours actually worked, while addressing the significant financial burden of overtime payment. If the panel rejects its proposal, the OSE requests that it recommend current language instead of the status quo because one union has claimed an orally-agreed-upon status quo in grievances.

B. Position of Coalition

The Coalition references the elevated standard that the panel has repeatedly cited requiring compelling justifications to support unilateral changes. The OSE has not identified any of the varieties of evidence the panel noted in IP 2000-05. Further, overtime cost is at the control of the employer who can adjust work or hire new employees to avoid it. These excess hours beyond normal expectations represent sacrifices for employees, which merit the continued recognition that has been bargained for in current contracts. Additionally, the OSE has provided no cost estimates of the effect of these changes and instead relies on hyperbolic assertions of irresponsibility.

C. Impasse Panel Evaluation and Recommendation

The parties have agreed during recent bargaining cycles to some voluntary changes to bring overtime eligibility criteria that exceed the requirements of federal law closer to the minimum federal requirements. This year, the OSE has sought to continue this pattern by not counting compensatory hours toward the overtime eligibility threshold. While overtime costs are an understandable concern of the employer, the unilateral amendment of existing language requires particular evidence of hardships or convincing justifications. Given the relative improvements to the state's economic standing and the lack of specific evidence as to the effect, the panel is not convinced that the OSE has met this burden.

Accordingly, the Impasse Panel **recommends** that current language be retained for impasses involving the calculation of hours counting toward overtime eligibility. The proposed collective bargaining agreements included as an appendix in the separate unit-specific impasse recommendations reflect these findings.

E. OTHER PROVISIONS OF THE PROPOSED COLLECTIVE BARGAINING AGREEMENTS

This consolidated impasse panel recommendation addresses issues affecting several bargaining units. Each bargaining unit also has other provisions where either unique impasse issues exist or tentative agreements have been reached. The Impasse Panel will issue separate IP recommendations, numbered IP 2013-02 through IP 2013-08, that address each collective bargaining agreement individually and incorporate by reference the findings in this Impasse Panel Recommendation for the consolidated consideration of these issues.

F. SUMMARY

The panel's recommendations for the provisions at Coalition impasse are described above. Specific contractual language implementing these recommendations will be made as part of separate, unit-specific impasse recommendations. Those recommendations will contain an Appendix containing a complete recommended collective bargaining agreement, which the commission may consider approving or modifying.

Every effort will be made by staff to have those appendices accurately reflect a combination of the text of provisions where tentative agreement was reached and the recommendations of the panel for provisions at impasse. The commission is scheduled to consider these recommendations at its meeting on December 18, 2013. If any party identifies a substantive error in its appendix, please contact the impasse coordinator by December 9, 2013. If necessary, an amended appendix can be created.